

EXHIBIT 8.8

CONCEPTS FOR GROUNDWATER PROTECTION PROGRAM

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The terms used herein shall have the meanings defined in paragraph 2 of the Tohono O'odham Settlement Agreement. In addition, the term "Non-exempt Well" means a well that is not an "Exempt Well" and the term "Replacement Well" means a well no further than 660 feet from an existing well being replaced that will not annually withdraw in excess of the historical withdrawals from the original well or as that term is defined in future ADWR well-spacing regulations if the distance of the replacement well from the original well is less than 660 feet.

The basic elements of the Groundwater Protection Program ("Program") referenced in paragraph 8.8 of the Tohono O'odham Settlement Agreement are as follows:

1. Written consent of the Nation shall be required for the permitting of any new Non-exempt Well, for which the projected 10-feet-within-5-year drawdown contour (as determined by a well-spacing analysis done under state regulations by ADWR) intercepts the border of the San Xavier Reservation.

- 2.a. In addition to the requirements of paragraph 1, an applicant for a permit to drill a proposed well of over 500 gpm capacity, or for a group of wells of over 500 gpm total capacity, to be located within two miles of the exterior boundaries of the San Xavier Reservation shall submit to ADWR one of the following:

- i. Evidence showing that the water levels at the proposed well site(s) are declining at less than an average rate of 2 feet per year (based on annual water level data collected during the five years prior to the permit application date); or

ii. Evidence showing that a projected 5-feet-within-5-year drawdown contour does not intercept the border of the San Xavier Reservation; or

iii. The Nation's written consent.

2.b. In determining the average annual water level change at a proposed well site and the projected drawdown effect of the proposed well(s) for purposes of obtaining a permit under this paragraph, the following shall be excluded:

i. the water-level effect of the pumping within the San Xavier Reservation; and

ii. the water-level effects of underground storage facilities within the 2 mile limit and permitted recovery wells within that limit except the water-level effects at the site of the proposed well of storage at said underground storage facilities by or on behalf of the applicant within the 2 mile limit.

2.c. For purposes of this paragraph, if the same applicant submits an application for a permit to drill a well within eighteen months of a previous application, the applications shall be aggregated in terms of capacity and considered as an application for a group of wells.

3. Upon receiving an application for a permit to drill any Non-exempt Well located within two miles of the San Xavier Reservation, the ADWR shall mail to the Nation written notice of the application along with a copy of thereof. The Nation shall have 60 days after mailing of the written notice to file an objection to the application. The grounds for an objection are that the application fails to meet the standards required herein or that the granting of the permit will violate these standards. If objection is made, a hearing shall be held on the application within 60 days of receipt of the objection. The

Nation shall be a party in such hearing. A recommendation based on the hearing shall be made by the hearing officer within 30 days after the close of the hearing. Within 30 days of the recommendation, the Director of ADWR ("Director") shall render his decision on the application. Any decision of the Director granting or denying a permit after objection by the Nation shall be subject to review by the Gila River Adjudication Court by an aggrieved party filing an application for review with the court within 30 days of mailing of the written notice of the decision of the Director on the application.

4. An applicant for a "Replacement Well" within two miles of the San Xavier Reservation shall be exempt from the requirements set forth in paragraphs 1 and 2 except that ADWR shall give notice thereof and provide the opportunity to object to the application and obtain review of the Director's decision thereon as provided in paragraph 3.

5. An applicant for a permit to drill an Exempt Well shall be exempt from the requirements set forth in paragraphs 1 and 2.

6. An applicant for a permit to drill a recovery well within two miles of the exterior boundaries of the San Xavier Reservation and within one mile of an underground storage facility shall be exempt from the requirements set forth in paragraphs 1 and 2 so long as the well is permitted only to recover storage credits accrued for water stored at that facility.

7. This Program need not be described in detail in the SAWRSA Amendments, but the enactment of state legislation implementing the Program and authorizing ADWR's role in the Program will be a condition precedent to the Enforceability Date.

8. The judgment approving the Tohono O'odham Settlement Agreement should incorporate the salient provisions of this Program and the settlement will be made contingent on the passage of state legislation implementing the Program and authorizing the Director to enforce the Program as part of an approved Indian water rights settlement. Review of decisions of the Director will be part of the continuing jurisdiction of the Gila River Adjudication Court.